IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1616 (SS) OF 2004

Shri Heera Ballabh Joshi,
Aged about 61 years,
S/o Shri Dharmanand Joshi,
R/o Mohalla Bharatpuri, (Near Atta Chakki)
Ramnagar, District- Nainital .....Petitioner.

Versus

1. State of Uttaranchal through its Secretary, Forest, Dehradun, Uttaranchal.
2. Conservator, Kumaon, North Region, Nainital, Uttaranchal.
3. Chief Conservator, Kumaon, Nainital.

.....Respondents.

Mr.D.S. Patni, Advocate for the petitioner.
Learned Standing Counsel for the respondents.

Dated : 28.03.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of mandamus commanding the respondents to give the petitioner notional promotion from the date Junior to the petitioner has been promoted to the post of Senior Clerk, Head Clerk, thereafter, Officer Superintendent with all consequential benefits. Further prayer has been made for a writ of mandamus commanding the respondents to reimburse amount of Rs. 8800/- along with 12% interest which the petitioner had paid to the Income Tax Department.

Briefly stated, the petitioner was initially appointed as Store Keeper on 05.12.1963 and assumed charge on 06.12.1963

in the office of Divisional Forest Officer Soil Conservation Division Ranikhet.

By means of Government Order No. 1812 dated 31.07.1976, State Government took a policy decision to merge the cadre of Store Keeper with the Cadre of Junior Clerk. The merger was for the purpose of opening avenues of promotion on the post of Storekeeper. In the said Government Order it was stated that after merger of the two cadres the employees seniority would be reckoned from the date of continuation of service. It was also stated that if date of continuation of service is same then seniority would be fixed in accordance with the age of the employees.

On 18.04.1977 another Govt. Order was issued in which it was mentioned that those employees who were working on the post of Store Keeper would continue to get the benefit of the post until they are promoted to the post of Senior Clerk and it was also stated that till an option is given for the post of Junior Clerk, they will continue to get the benefit of the post of Store Keeper.

The petitioner on account of pecuniary loss for example special pay, rent free accommodation etc. gave option for the post of Store Keeper on 17.05.1977.

On 08.06.1983, petitioner preferred a representation before the respondent no.2. The respondent no.2 in response to the representation preferred by the petitioner dated 08.06.1983 gave a noting on 29.08.1983, in which it was staed that the petitioner's name would be shown in the seniority list of Assistant Clerk after one Sri M.A. Khan who was at Serial No. 15.

In pursuance of the said representation, the petitioner was given regular appointment on the post of Store Clerk vide order dated 18.08.1987 w.e.f 01.04.1982.

The respondent no.2 in accordance with the order dated 30.4.2002 passed by the respondent no. 3 vide order dated 12/10.08.2002 paid the Time Sale w.e.f. 01.07.1982 and Personal Promotional Scale w.e.f. 01.03.1995.

Petitioner has submitted that he was sanctioned and paid the arrears of Rs. 64,836/- for the year, 1982 to September, 2002 in the month of August, 2003 and on account of untimely payment, the entire payment from the year, 1982 to the year, 2002 was paid in bulk, therefore, e the petitioner had to pay income tax of Rs. 8800/- on the arrears of salary of Rs. 64,836/- for no fault of him.

The grievance of the petitioner is that Junior to the petitioner has been promoted to the post of Senior Clerk, Head Clerk, thereafter, Office Superintendent and if the seniority of clerical cadre is considered on the post of senior clerk the petitioner ought to have been after one Sri Naveen Chandra Joseph, Serial No. 30. Petitioner has further submitted that similarly place one Sri Prakash Chandra Lohani has been given the chance of promotion but he has forgone the same.

Petitioner has filed a representation on 04.12.2004 stating his grievance, but the same has not yet been disposed of.

In view of the above, the respondents are directed to decide the representation of the petitioner to give notional promotion to the petitioner from the date he became entitled for being promoted and reimburse amount of Rs. 8800/- within a period of two months from the dated of certified copy of the order.

Writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

28.3.2006
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